

**Editor's note: Appealed -- aff'd, Civ. No. 1960-72 (D.D.C. Feb. 7, 1974), aff'd, per curiam decision (Jan. 24, 1975)**

BARNEY R. COLSON

IBLA 70-76

Decided August 1, 1972

Appeal from decision by Director, Bureau of Land Management, rejecting applications ES 5051 and 5052 for cash redemption of Sioux Half-breed scrip.

Affirmed as modified.

Scrip: Special Types of Scrip -- Scrip: Validity

The right to locate Sioux Half-Breed scrip is a personal right, not subject to transfer. Although such scrip may be located by an attorney in fact with authority from the scribee to locate land in the name of the scribee, such authority is revoked upon death of the scribee.

Scrip: Payment in Satisfaction -- Scrip: Special Types of Scrip -- Scrip: Validity

One who never acquired rights from the original scribee or by substitution to select and locate land under the scrip certificate in the name of the scribee is not entitled to receive any cash payment for redemption of Sioux Half-Breed scrip certificates.

Rules of Practice: Hearings

A request for a hearing will be denied where it does not appear that a hearing would develop any facts material to the ultimate disposition of the case.

OPINION BY MR. HENRIQUES

Barney R. Colson has appealed from a decision dated August 14, 1969, wherein the Bureau of Land Management dismissed his appeal from an Eastern States land office decision dated January 13, 1969, which had rejected his applications ES 5051 and 5052 for cash redemption of Sioux Half-Breed scrip certificates Nos. 379-C and 398-D. The applications were filed pursuant to section 6, Act of August 31, 1964, 78 Stat. 751, 43 U.S.C. § 274 fn. (1964). The Land Office decision states its action was without prejudice to

the applicant's right to refile the applications for cash redemption when litigation involving these certificates is terminated. The Bureau's decision stated the appeal was dismissed without prejudice to Colson's right to refile upon final judicial determination that he is fully qualified to acquire land in satisfaction of his claims under the scrip certificates.

The Act of August 31, 1964, provides:

Sec. 6. Prior to January 1, 1970, or, in the case of soldiers' additional homestead claims, January 1, 1975, any person who has a claim recorded pursuant to the Act of August 5, 1955, by written notice to the Secretary of the Interior, or any officer of the Department of the Interior to whom authority to receive such notice may be delegated, may elect to receive cash instead of public land in satisfaction of his claim, at a rate per acre equal to the average value of the lands offered by the Secretary under section 4 of the Act. Upon a determination that the claim is valid, the Secretary or his delegate shall certify the claim of the Secretary of the Treasury who is authorized and directed to pay the claim out of any money in the Treasury not otherwise appropriated. Acceptance of the money shall constitute a full and complete satisfaction of the claim or holding for which the money is paid: Provided, That no agent or attorney acting on behalf of another to procure a payment under this Act shall demand, accept, or receive more than 10 per centum of the payment made, and any agreement to the contrary shall be null and void.

The subject Sioux Half-Breed scrip certificates had been presented earlier by Colson under application BLM 047548. The Department held in Barney R. Colson, 70 I.D. 409 (1963), that the right to locate Sioux Half-Breed scrip is a personal right not subject to transfer, and although such scrip may be located by an attorney in fact with authority from the scribee to locate land in the name of the scribee, Colson had not shown that he had such authority.

Colson instituted a suit against the Secretary of the Interior in the United States District Court for the Middle District of Florida seeking to have the Departmental decision set aside. The action was dismissed with prejudice in Colson v. Udall, 278 F. Supp.

826 (1968), aff'd sub nom., Colson v. Hickel, 428 F.2d 1046 (5th Cir. 1970), cert. denied sub nom., Colson v. Morton, 401 U.S. 911 (1971).

Among the District Court's conclusions of law, were these:

1. The powers of attorney under which plaintiff claims by substitution do not confer upon plaintiff the right to select and locate public lands of the United States under the scrip certificates in the names of the persons to whom the certificates originally were issued.

2. Since the scrip certificates were issued under authority of the Act of Congress of July 17, 1854, 10 Stat. 304, only to persons who were then alive, it must be presumed, in the absence of any evidence to the contrary, that all the original scribees are now deceased.

3. Even if plaintiff acquired valid rights to select and locate lands in the name of the scribee by the substitute powers of attorney, the death of the scribees operates to revoke the powers, unless the powers were coupled with an interest.

4. If the powers of attorney which the plaintiff holds by substitution were coupled with an interest, then the transfer would constitute a violation of the prohibition in the Act of July 17, 1854, which provided that "no transfer or conveyance of any of said certificates or scrip shall be valid.

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8. This action is a suit against the United States, which is not a party and has not waived its sovereign immunity.

9. Plaintiff is barred from maintaining the action by the doctrine of laches.

10. The decision by the Solicitor of the Department of the Interior on behalf of the Secretary (A-28617) is supported by substantial evidence, consisting of the record, which contains plaintiff's application and amended applications, and other exhibits, copies of which

are attached to the complaint, and therefore is conclusive as a matter of law. [278 F. Supp. at 829, 830 1/]

Nothing presented by the appellant with his present applications for cash redemption of the Sioux Half-Breed certificates has cured the deficiencies stated in the Department's earlier decision, Barney R. Colson, supra, or in the court's conclusions of law, supra. We find that Colson is not entitled to receive any cash payment in redemption for the Sioux Half-Breed scrip certificates No. 379-C issued to Ellen Angie for 80 acres or No. 398-D issued to Anthony Renville for 160 acres, because he never acquired rights from the original scribees or by substitution to select and locate land under the scrip certificates in the name of the scribees. His applications for cash redemption of Certificates Nos. 379-C and 398-D must be rejected with prejudice.

The request of the appellant for a hearing is denied as it does not appear that a hearing would develop any facts contrary to the finding of the court, or otherwise material to the ultimate disposition of the matter under consideration. The request for an opportunity to make oral argument is likewise denied.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision of the Bureau of Land Management is affirmed as modified and the applications of Colson for cash redemption of Sioux Half-Breed certificates Nos. 379-C and 398-D are finally rejected.

Douglas E. Henriques  
Member

We concur:

Joan B. Thompson  
Member

Frederick Fishman  
Member

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1/ The United States Court of Appeals for the 5th Circuit affirmed the District Court's decision on the ground that the suit was, in fact, against the United States which has not consented to be sued. The Circuit Court did not rule on other points raised by the appellants. Colson v. Hickel, supra.

